STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1793

Northern Lines Contracting, Inc.,
Appellant,
vs.

Faribault County,
Respondent,

Granite Re, Inc.,
Respondent.

Filed July 17, 2023
Affirmed
Connolly, Judge

Faribault County District Court
File No. 22-CV-20-461

Aaron A. Dean, Jeffrey A. Wieland, Aaron P. Minster, Moss & Barnett, P.A., Minneapolis, Minnesota (for appellant)

Gerald W. Von Korff, Christina Hopke, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondent Faribault County)

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Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Gaitas, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Respondent, a county, hired appellant, a general contractor, to improve a ditch. Appellant brought breach-of-contract and nonpayment claims against respondent, which counterclaimed for breach of contract and negligence and brought a cross-claim against respondent surety. Following a jury trial and posttrial motions, appellant claims that the district court erred in awarding interest at the contractual 6% instead of the statutory 18% and in offsetting the jury's award to respondent against its award to appellant before calculating interest and that it abused its discretion in awarding attorney fees to both respondent and respondent surety. Because we see no error and no abuse of discretion, we affirm.

FACTS

In May 2017, respondent Faribault County (respondent) hired appellant Northern Lines Contracting, Inc., to renovate and improve a drainage system. The parties signed three documents that comprised their contract: the agreement form, the general conditions, and the supplemental conditions.

In relevant part, the agreement provided in Article 7 that "[a]mounts not paid when due shall bear interest at the rate of 6.00 percent per annum." The general conditions provided at Article 15.6.B.1 that if, after the final pay application was submitted, the engineer did not believe the work was complete, it would return the pay application, "indicating in writing its reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for

Payment"; at Article 16.2 that the owner could terminate the contract for "failure of contractor to perform or otherwise to comply with a material term of the Contract Documents"; and at Article 16.2.E that "Contractor shall not be entitled to receive any further payment until the Work is completed." The supplementary conditions provided at Article 17.1.D that "[i]f the Owner or Engineer is a prevailing party the Contractor shall reimburse the Owner or Engineer its costs and reasonable attorney's fees." Appellant was required to obtain a performance bond and a payment bond, which it did; respondent Granite Re, Inc., (Granite) was the surety.

In January 2019, respondent refused to pay appellant's final payment application because of items that had not been completed. Appellant completed some of these items but claimed that other items were not its responsibility. Respondent said appellant had caused excessive damage to landowners' property and alleged some defective work; appellant denied responsibility for the damage.

In June 2019, the parties were unable to resolve their differences. Respondent terminated the contract with appellant and hired a new contractor to complete the job. In October 2019, respondent submitted a claim under the performance bond to Granite for the additional construction costs, $1,037,953.35.

Granite brought an action against appellant and respondent in federal district court seeking a declaratory judgment determining the parties' rights and obligations under the contract. Respondent moved to dismiss the action for lack of subject-matter jurisdiction and forum selection. The federal district court concluded that it had subject matter jurisdiction but dismissed Granite's claims under the forum non conveniens doctrine

because the claims fell within the agreement's forum-selection clause. *Granite Re, Inc. v. Northern Lines Contracting, Inc.*, 478 F. Supp. 3d 772 (D. Minn. 2020).

Appellant then brought this action against respondent in state court, alleging claims of breach of contract and unjust enrichment and seeking damages of $549,766.18 plus interest, costs, and attorney fees. Respondent filed counterclaims for breach of contract and negligence against appellant and a cross-claim against Granite. Appellant then filed an action against Granite seeking a declaratory judgment. Granite filed a counterclaim against appellant and a third-party complaint against the indemnitors on the bond Granite had issued as appellant's surety.

Following a trial on the parties' breach-of-contract and damages claims in April 2022, the jury returned a special verdict with findings that both parties had breached the contract; appellant's damages were $397,987.18, due by January 25, 2019; and respondent's damages were $338,004.62. In its May 2022 order, the district court adopted the special-verdict findings and issued an order stating that: (1) under Article 16 of the General Conditions, appellant's damages award was offset by respondent's damage award, leaving appellant with an award of $59,982.56;[1] (2) under Article 7 of the agreement, interest was 6% per year, or $11,457.62 for January 2019 to January 2022; (3) respondent could not hold Granite liable under the contract; (4) the issues of legal fees and costs were reserved; and (5) the order was stayed for 30 days.

[1] $397,897.18 - $338,004.62 = $59,982.56

In June 2022, appellant filed a motion for amended findings, asking that: (1) interest be calculated at 18% under Minn. Stat. § 471.425, subd. 4(b) (2020), not at 6% under the parties' contract; (2) interest be calculated from January 25, 2019, to May 5, 2022, not January 2022; and (3) interest on appellant's damage award be calculated prior to the offset of respondent's damage award, i.e., on $397,987.18 instead of on $59,982.56, because the parties' damages had not been determined by the jury until May 5, 2022. Appellant also filed an application for costs and disbursements amounting to $19,883.28.

Also in June 2022, respondent filed a motion for attorney fees and costs of $277,884. In July 2022, Granite filed a motion for attorney fees against appellant and third-party defendants (indemnitors) in the amount of $161,019.50. A hearing was held on all motions in August 2022.

In October 2022, the district court issued an order granting appellant's motion as to calculating interest through May 5, 2022, but denying it as to the calculation of the interest and the offset; awarding appellant $14,575.84 of the $19,883.28 in costs and disbursements it had requested; awarding respondent $222,784.50 of the $277,884.00 in attorney fees it had requested; finding Granite was not entitled to costs and disbursements from respondent; and awarding Granite $90,602.85 in attorney fees against appellant.

Appellant challenges the denial of its motion to calculate interest at 18% instead of 6% and to calculate interest prior to making the offset; it also argues that the district court abused its discretion in awarding attorney fees to respondent and to Granite.

DECISION

Standard of Review

A district court's denial of posttrial motions for amended findings or a new trial will not be disturbed absent a clear abuse of discretion. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Rec. Bd.*, 673 N.W.2d 169, 177-79 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004). An abuse of discretion exists only when the district court's ruling is based on an erroneous view of the law or is against the facts in the record. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). An award of attorney fees is also within the district court's discretion and will not be disturbed absent an abuse of that discretion. *Smolecki v. Smolecki*, 386 N.W.2d 846, 849 (Minn. App. 1986), *rev. denied* (Minn. July 16, 1986). However, this court reviews de novo the district court's interpretation of a contract, which is a question of law. *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

1. Rate of Interest on Appellant's Award

The parties' agreement provides in Article 7 that "[a]ll amounts not paid when due shall bear interest at the rate of 6.00 percent per annum." In its post-trial order, the district court awarded compound interest of 6% per year on appellant's award based on this provision.

Appellant argues that, under Minn. Stat. § 471.425, the correct rate of interest is 18%. Three sections of that statute are relevant.

> Subd. 2. A municipality must pay each vendor obligation according to the terms of the contract or, if no contract terms

> apply, within the standard payment period unless the municipality in good faith disputes the obligation.
>
> . . . .
>
> Subd. 4 (b) The rate of interest calculated and paid by the municipality on the outstanding balance of the obligation not paid according to the terms of the contract or during the standard payment period shall be 1 1/2 percent per month or part of a month.
>
> . . . .
>
> Subd. 4 (c) No interest penalties may accrue against a purchaser who delays payment of a vendor obligation due to a good faith dispute with the vendor regarding the fitness of the product or service, contract compliance, or any defect, error, or omission related thereto. If such delay undertaken by the municipality is not in good faith, the vendor may recover costs and attorney's fees.

Appellant argues that the statute supersedes the contract because the district court did not make a finding that respondent's nonpayment was in good faith and therefore the statutory bad-faith penalty of 18% applies. But the district court wrote:

> In this case, there was a good faith dispute regarding fitness of the service and contract compliance. This is supported by the jury's findings, as the jury found both parties breached the contract. Furthermore, even though [appellant] disagreed with [respondent's] position, there was never an allegation that the dispute was not made in good faith. For these reasons, the Court finds [appellant] is not entitled to the statutory interest rates.

Thus, the district court did find there was no bad faith between the parties.

Appellant also argues that the determination that there was a good-faith dispute is not "logical or reasonable" because the district court did not review "the credibility of witnesses or the probative force and character of the evidence." But the jury, not the district

court, was the factfinder; it evaluated the credibility of the witnesses and the evidence. As the district court noted, appellant never alleged bad faith throughout the proceedings. There was no error of law or abuse of discretion in the district court's refusal to make, sua sponte, a finding of bad faith and use that finding as a basis for awarding 18% interest to appellant.

2. The Timing of the Offset

The district court awarded appellant interest on the $59,982.56 owed by respondent after respondent's damages had been deducted from appellant's damages. Appellant asserts that it "was entitled to prejudgment interest on its entire damages award, without offset," or interest on $397,987.18, not on $59,982.56. Appellant argues that the jury determined respondent owed appellant $397,987.18 as of January 25, 2019, and did not determine when appellant owed respondent $338,004.62: therefore, the prejudgment interest accrued on appellant's pre-offset award as of January 25, 2019.

The district court rejected this argument:

> [Appellant] argued that because [respondent's] damage award was not known by January 25, 2019, [respondent's] damage award could not be deducted from [appellant's] damage award. In making this argument, [appellant] relied solely on the jury's finding that [respondent] was obligated to pay [appellant] on January 25, 2019. The Court disagrees. The jury's finding that [appellant] breached the contract indicates that the jury found some portion of [appellant's] performance under the contract defective. Under the contract, [appellant] was not entitled to receive a final payment until any deficiencies were corrected and the work on the Project was complete. Thus, as a matter of law, [appellant] was not entitled to a final payment until sometime after January 25, 2019.

We agree with the district court's position, which is supported by both federal and state case law. *See N. States Power Co. v. ITT Meyer Indus*., 777 F.2d 405, 413 (8th Cir. 1985) ("Minnesota law provides that when a sum certain is due, and that amount may be reduced by an unliquidated setoff, prejudgment interest is allowable on the balance."); *Knutson v. Lasher*, 18 N.W.2d 688, 696 (Minn. 1945) ("The rule is that, where the amount due under a contract is certain and liquidated or capable of ascertainment, but is reduced by an unliquidated setoff, interest is allowable on the balance found to be due.").

Appellant does not furnish any statute or caselaw supporting its view that prejudgment interest is to be awarded on a judgment prior to the offset of amounts due to the obligor from the obligee, or that interest on the amount of a judgment is due when the amount of that judgment will never be due.

3. Respondent's Attorney Fees

Respondent requested $277,884 in attorney fees and costs. The district court awarded respondent $222,784.50 of that amount, having deducted both (1) fees incurred prior to August 24, 2020, when appellant brought this action against respondent, or $51,813.50, and (2) fees incurred after May 6, 2022, when the claim for which respondent was the prevailing party was concluded, or $3,286.[2] In deducting these amounts, the district court noted that it was construing the contract in appellant's favor because respondent had drafted it.

[2] $51,813.50 + $3,286 = $55,099.50; $277,884 - $55,099.50 = $222,784.50.

Appellant does not challenge the amount of respondent's attorney-fee award; it rather challenges the district court's basis for the award. Respondent sought attorney fees and costs under Article 16.2.E of the General Conditions, providing that, after termination of a contractor for cause, "[i]f the cost to complete the Work including such related claims, costs, losses and damages [including attorney fees] exceeds such unpaid balance [of the contract price], Contractor shall pay the difference to Owner." The district court agreed with appellant that this section of the contract gave respondent the right to recover only legal fees that were associated with completion of the construction project and that the section "was intended to compensate for expenses that were incurred in order to complete the Project."

Article 17, however, concerns attorney fees arising from the settling of other disputes. Provisions A and B appear in the general conditions, while provisions C and D appear in the supplementary conditions.

> ***Article 17—Final Resolution of Disputes***.
> *17.1 Methods and Procedures*
> A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this Article:
> 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
> 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
>
> B. Final Resolution of Disputes: For any dispute subject to resolution under this Article, Owner or Contractor may:
> 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or

> 2. agree with the other party to submit the dispute to another dispute resolution process; or
>
> 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.
>
> . . . .
>
> D. The rights and remedies available to the Contractor shall be limited to breach of Contract and no other cause of action, including, without limitation, negligence, misrepresentation or other tort theory. Any litigation concerning claims under the Contract shall be venued in the County District Court of the county the project is located within. Neither the Engineer, nor the Contractor shall be entitled to a jury trial in any such action. If the Owner or Engineer is a prevailing party the Contractor shall reimburse the Owner or Engineer its costs and reasonable attorney's fees.

The district court relied on Article 17.1.D to award respondent costs and attorney fees incurred in defending and prevailing on its claim that appellant breached the contract.

Appellant argues that the district court erred by considering Article 17.1.D., a supplementary condition, as "a freestanding provision, [because] it is meant to be integrated into Article 17 of the General Conditions." Specifically, appellant argues that, because Article 17.1.A says the article applies to "[d]isputes . . . arising after final payment has been made," and final payment has not yet been made, Article 17.1.D does not apply and cannot be the basis for an award of attorney fees to respondent.

Article 17.1.D of this contract was construed by the federal district court in *Granite*, 478 F. Supp. 3d at 782, in the context of forum selection. Respondent moved to dismiss under Article 17.1.D, the "forum-selection clause"; Granite argued that the forum-selection

clause did not apply because Granite was not bringing claims under Article 17. The federal district court concluded:

> Articles 17.1.A and 17.1.B are both part of the base contract, and both are clearly directed to the contractual dispute-resolution process.
>
> By contrast, Articles 17.1.C and 17.1.D appear in the supplementary conditions (not in the base contract) and are not so limited. . . . [A]rticle 17.1.D—the forum-selection clause—applies to "*[a]ny* litigation concerning claims under the Contract. *Id*. (emphasis added). In short, the forum-selection clause is not limited to claims that are subject to the contractual dispute-resolution process described in Articles 17.1.A and 17.1.B.

Granite, 478 F. Supp. 3d at 782. Thus, the "arising after final payment has been made" language of Article 17.1.A.2 does not apply to the provision of Article 17.1.D that the prevailing owner's or engineer's costs and reasonable attorney fee shall be reimbursed by the contractor.

Moreover, there would be no reason to restrict the reimbursement of a prevailing party's costs and attorney fees to disputes arising "after the final payment has been made"; when the dispute arose is not relevant to a prevailing party's right to costs and attorney fees. In contrast, the "[a]ny litigation concerning claims under the contract" phrase that begins Article 17.1.D. clearly applies to both the choice of venue and a prevailing party's right to costs and attorney fees.

Appellant goes on to argue that, because respondent did not invoke Article 17.1.D in its motion for attorney fees, the district court was prohibited from relying on that article because appellant had not had a chance to respond to it. But appellant has not produced a

convincing response to the application of Article 17.1.D on appeal and has provided no support for its implied view that a district court is prohibited from looking at and relying on relevant parts of the parties' contract when that contract is part of the record.

4. Granite's Attorney Fees

To support Granite's motion for $l61,019.50 in attorney fees, its lead counsel filed a 25-page billing statement that included: (1) the dates service was provided from March 27, 2019 to April 29, 2022; (2) the task performed, or the task code; (3) the hourly rate of the attorney performing the task; (4) the number of hours billed; (5) the amount billed; and (6) a description and identification of the task performed. There appear to be at least 30 separate tasks on each page. The district court reviewed the list and disallowed almost half the fees Granite requested, awarding Granite $90,602.85 in attorney fees.[3]

Specifically, the district court identified and rejected fees totaling $44,381.29 incurred by Granite for its federal district court case, finding that "Granite should have been familiar with that [indemnity] contract and should not have filed that claim [in federal district court]," and an additional $26,035.36 in fees incurred prior to the commencement of this action because the district court said it did not have the information necessary "to evaluate the reasonableness of Granite's hours prior to the commencement of this suit."

"Because the district court is the most familiar with all aspects of the action from its inception through post trial motions, it is in the best position to evaluate the reasonableness of requested attorney fees." *650 N. Main Ass'n v. Frauenshuh, Inc*., 885 N.W.2d 478, 494

[3] Half of $l61,019.50 is $80,509.75; the district court disallowed $70,416.65.

(Minn. App. 2016), (quotation omitted), *rev. denied* (Minn. Nov. 23, 2016). To determine the reasonableness of fees requested, district courts consider "all relevant circumstances, including the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *State by Head v. Paulson*, 188 N.W.2d 424, 426 (Minn. 1971).

Appellant objects to some of the fees incurred by Granite's attorneys' attendance at depositions and the trial because, in appellant's view, their participation was minimal. The district court rejected those arguments, stating that:

> Granite was a party to this lawsuit. Their attendance during discovery was warranted. Their attendance at trial was mandatory unless they were excused by the Court. [Appellant] never motioned for Granite's presence at trial to be excused even though [appellant] should have known that the indemnity clause covered Granite's legal fees regardless of the trial's outcome. Granite's attorneys' hourly rates are within average for the area and are reasonable.

Appellant also argues that Granite's attorney fee award should be reversed "because the district court failed to adequately analyze the reasonableness of the fees," the award "is not supported by sufficient findings as to its reasonableness," and the district court's order "does not contain sufficient analysis of the attorney billing records to enable effective appellate review." But the district court's order found that the attorney fees were reasonable, and it gave specific reasons for awarding some fees and not awarding others.

Appellant identifies, as it identified to the district court, three of the roughly 750 items billed that appellant alleges to be inadequate: (1) "Review and analyze previous filings" for .8 hours at a cost of $164 on November 19, 2020; (2) "Prepare discovery" for 1.5 hours at a cost of $345 on February 26, 2021, and (3) "Review and analyze final revisions and draft letter to client re COVID non-compete agreements" for .3 hours at a cost of $61.50 on November 11, 2020. These three items amount to 2.6 hours of the 767.8 hours billed and $570.50 of the $161,019.50. Admittedly, the third item, a charge of $61.50 for 18 minutes of work, may have been wrongly attributed to this case and was arguably a clerical error, but the error was de minimis, and the district court's failure to address it does not, as appellant suggests, imply that numerous entries were erroneous.

Affirmed.